

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of SBC Communications Inc. (SBC) and AT&T Corp. (AT&T) for Authorization to Transfer Control of AT&T Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a Result of AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation.

Application 05-02-027  
(Filed February 28, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING  
REGARDING MOTION FOR SCHEDULE EXTENSION**

On May 17, 2005, The Utility Reform Network (TURN) filed a motion seeking a day-for-day extension in the date for filing Intervenor testimony in this proceeding, corresponding to the time from March 30, 2005 to the date that Joint Applicants provide all documentation relating to their national synergies model, pursuant to Rule 74.3, as that model was used in calculations in Exhibit 1 to the Joint Supplemental Application.

TURN states that Applicants have delayed responding to TURN's requests for materials relating to the "national synergy model" at least since the Joint Supplemental Application was filed on March 30, 2005. On April 1, 2005, after the Joint Applicants discussed the "national synergy model" in their Joint Supplemental Application, TURN requested access to an electronic copy of the national synergy model.

Because of the delays it has experienced in gaining access to this material, TURN argues that additional time should be granted for it to analyze any data that the Joint Applicants ultimately produce. TURN argues that the extension is especially warranted in view of what TURN characterizes as Applicants' attempt to "fast track" this proceeding. TURN argues that Joint Applicants' discovery delays are inconsistent with a reasonable schedule sufficient to conduct a fair analysis and develop a complete record. Furthermore, TURN believes that granting the extension is necessary to ensure that Joint Applicants fully cooperate in responding to discovery requests.

Responses in support of the TURN motion were filed on May 24, 2005, by the Office of Ratepayer Advocates (ORA) and by the City and County of San Francisco (City). The City argues that a seven-week schedule extension is warranted given the seven-week delay experienced by TURN in obtaining access to relevant computer models and related materials. The City supports a day-for-day schedule extension so that Applicants do not gain an unfair advantage by delaying the production of discovery.

ORA also supports TURN's motion, noting that TURN was unable to review relevant material relating to synergy benefits for about seven weeks. Even though the national synergy model was used, in part, to generate Exhibit 1 to the March 30, 2005 Supplement, Joint applicants did not provide TURN or ORA supporting documentation relating to the calculations behind national model until May 19, 2005.<sup>1</sup> TURN received no documents until that time. Yet Rule 74.3(b) requires that substantial information be provided at the time

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<sup>1</sup> ORA is in a different position from TURN in that ORA was provided copies of materials and a 2.5 hour off-the-record briefing on the model. In its pleading, ORA discusses the effect of Rule 74.3 on TURN, which did not receive copies or this briefing.

information produced by a computer model or program is submitted. Given the approach of the June 10th due date for testimony, ORA thus believes that scheduling relief requested by TURN is necessary.

ORA argues that the failure to provide this information over a prolonged period is a serious contravention of Rule 74.3(b). Ultimately, the May 20 Administrative Law Judge (ALJ) Ruling confirmed that this material must be provided, but only after parties filed two motions to compel, following the meet and confer process outlined in Resolution ALJ-164. As a result, ORA argues that the extension of time should be granted to allow parties to make up for the lost time.

Applicants filed a response in opposition to the Motion on May 24, 2005. Applicants minimize the significance of the national synergies model as a source required by TURN to analyze and develop recommendations regarding claimed merger-related synergies attributable to California operations. Applicants acknowledge that their California-specific model includes two lines of inputs regarding estimated operating synergies and implementation costs taken from a run of the national synergies model. Applicants argue, however, that TURN can readily verify revenues and earnings based on publicly available data, the financial information filed with the application, or estimates from other sources. Applicants argue that TURN can also readily identify how Applicants derived the California operating expense factor and discounted estimated benefits to present value. Accordingly, Applicants claim that no extension of time is justified because TURN has not been prevented from conducting an analysis of California-specific benefits.

Applicants also reiterate arguments previously made in their Response to Protests, claiming that Protests do not raise any genuine factual issues requiring hearing. As a result, Applicants not only oppose TURN's request for extension, but argue that the existing schedule set forth in the Revised Scoping Ruling should be further shortened. Applicants repeat previous claims that this application should be handled on a schedule similar to those used in other mergers involving non-dominant interexchange carriers and competitive local exchange carriers.

Nonetheless, if any additional time is granted, Applicants argue that protestants should be given no more than one additional week. Applicants state that if a one-week extension is granted to Protestants, they would favor a corresponding one-week shortening of the interval for Applicants' rebuttal testimony. In this manner, the overall end-point for the schedule would not change. Applicants also ask the Commission to address the proposals set forth in their Response to Protests in which further schedule acceleration is proposed beyond what is currently adopted.

### **Discussion**

Both TURN and the Applicants take extreme positions, but in opposite directions, with respect to changing the schedule. Although TURN has experienced delays in discovery of certain matters, TURN does not show how certain specific delays necessarily warrant a full day-for-day extension for its entire case preparation. On the other hand, Applicants go to the other extreme by insisting that no extension at all is warranted, but that instead, time should be shortened even further.

Parties' disagreement relates, at least in part, to differing views concerning the significance of the national synergies model and related inquiries concerning

merger-related benefits as an essential element in parties' case preparation. In any event, two rulings have been issued granting motions of TURN and ORA, respectively, requiring access to the "national synergies model." These rulings conclude that access to the national synergy model is relevant and necessary for the parties to prepare for hearings and develop testimony. Thus, in the interests of fairness and balance, delays in obtaining access to this model and related materials have a bearing on the schedule.

While the above-referenced discovery disputes with Applicant have had some impact on delaying ORA and TURN, however, granting a day-for-day extension would be excessive. On balance, it is ruled that a two-week extension shall be granted in the due date for protestants' testimony, extending it from June 10 to June 24, 2005. The remainder of the schedule shall remain unchanged. In this manner, the scheduled date for a Commission decision remains the same, and overall integrity of the adopted schedule remains intact.

Applicants' rebuttal testimony, therefore, is still due on July 8, 2005. As a result, the interval between Protestants' reply testimony and Applicants' rebuttal testimony is shortened by two weeks. Protestants will not be disadvantaged by this two-week shortening, since only the Applicants will serve rebuttal testimony. Moreover, in the Response to Protests, Applicants had proposed shortening the interval between Intervenor reply testimony and Applicants rebuttal testimony to a two-week interval. The adjusted schedule incorporates Applicants' proposed two-week-interval shortening.

In their Response to Protests, Applicants had also advocated shortening other elements in the adopted schedule, beginning with the date for Applicants rebuttal testimony, accelerating it from July 8, 2005, to June 24, 2005. Applicants proposed that other subsequent due dates also be accelerated. For example, in

their Response to Protests, Applicants also proposed shortening the interval from rebuttal testimony to the second prehearing conference from 21 days to 14 days, as well as subsequent accelerations in the schedule.

Applicants have not justified further acceleration in the schedule, particularly in view of the contentiousness in discovery up to this point with the resulting delays. Thus, the request for further schedule acceleration is denied. Parties are admonished to work cooperatively in resolving discovery disputes so that the scheduled due dates can be reasonably met and so that this proceeding moves forward expeditiously.

**IT IS RULED** that:

1. The Motion of TURN for a full day-for-day extension is denied, but instead, an extension of two weeks shall be granted in the due date for service of Intervenor Reply Testimony.
2. The due date for Intervenor Reply Testimony is extended from June 10 to June 24, 2005.
3. The previously adopted schedule for all other aspects of the procedural schedule shall not be changed.

Dated May 26, 2005, at San Francisco, California.

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/s/ Thomas R. Pulsifer  
Thomas R. Pulsifer  
Administrative Law Judge

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of Administrative Law Judge's Ruling Regarding Motion for Schedule Extension by using the following service:

☒ E-Mail Service: sending the entire document as an attachment to all known parties of record who have provided electronic mail addresses.

☒ U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Dated May 6, 2005, at San Francisco, California.

/s/ Antonina V. Swansen

Antonina V. Swansen

### **N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.